

**BEFORE THE TENNESSEE CLAIMS COMMISSION  
DIVISION OF CLAIMS ADMINISTRATION**

**401 CHURCH STREET, LLC,**

**Claimant,**

**vs.**

**STATE OF TENNESSEE;**

**STEVEN G. CATES, in his capacity as  
Commissioner of the Tennessee Department of  
General Services;**

**LARRY MARTIN, in his capacity as  
Commissioner of the Tennessee Department of  
Finance and Administration; and**

**ROBERT J. MARTINEAU, JR., in his capacity  
as Commissioner of the Tennessee Department  
of Environment and Conservation,**

**Respondents.**

**Claim No. \_\_\_\_\_**

**RECEIVED**

**JUN 17 2013**

**DIVISION OF  
CLAIMS ADMINISTRATION**

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**401 CHURCH STREET, LLC'S NOTICE OF CLAIM**

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401 Church Street, LLC ("401 Church") files this Notice of Claim against the State of Tennessee; the Tennessee Department of General Services, through Steven G. Cates, in his capacity as Commissioner of the Tennessee Department of General Services; the Tennessee Department of Finance and Administration, through Larry Martin, in his capacity as Commissioner of the Tennessee Department of Finance and Administration; and the Tennessee Department of Environment and Conservation ("TDEC"), through Robert J. Martineau, Jr., in his capacity as Commissioner of TDEC (collectively, the "State") for damages stemming from the State's improper purported termination of a lease agreement in contravention of both the lease agreement and a subordination, non-disturbance and attornment agreement.

## **PARTIES, VENUE, AND JURISDICTION**

1. 401 Church is an entity that owns the L & C Tower located at 401 Church Street in downtown Nashville.

2. The State of Tennessee, through its officials, entered into two written contracts that are central to 401 Church's claim.

3. On behalf of the State of Tennessee, TDEC entered the lease contract at issue in this claim.

4. On behalf of the State of Tennessee, the Tennessee Department of Finance and Administration entered the subordination, non-disturbance and attornment agreement at issue in this claim.

5. On behalf of the State of Tennessee, the Tennessee Department of General Services purported to terminate the lease contract at issue in this claim, and this purported termination violates and is an anticipatory breach of both the lease contract and the subordination, non-disturbance and attornment agreement.

6. The Claims Commission has jurisdiction over this dispute under T.C.A. § 9-8-307(a)(1)(L) because this claim concerns contracts executed by a state officer or employee.

7. Venue is appropriate in the Middle Division because the claim arose in the Middle Division and concerns property located in the Middle Division.

## **FACTUAL BACKGROUND**

### **I. The State entered the Lease.**

8. In July 2004, the State entered a lease contract (the "Lease") with LC Tower, LLC ("LC Tower") to lease commercial office space for TDEC. As discussed below, the State later executed an amendment to the Lease. A true and correct copy of the Lease, as amended, is

attached as **Exhibit A**. The Commissioner of TDEC executed the Lease on behalf of the State, and both the Commissioner of the Department of Finance and Administration and the Attorney General approved the Lease, as amended. The Commissioner of TDEC was authorized to execute the Lease on behalf of the State of Tennessee.

9. Under the Lease, the State leased 177,706 square feet of office space in the L & C Tower. 177,706 square feet of office space constitutes approximately two-thirds of the L & C Tower's rentable commercial office space.

10. The Lease provided that the State would lease the office space at the L & C Tower from January 1, 2005, through December 31, 2014.

11. Upon information and belief, in July 2004, when the State entered a contract to lease commercial office space, the State required the counter-party to the contract to use a form lease contract that the State drafted, although the State allowed some limited negotiation as to termination provisions in the form lease. The Lease is such a form lease contract.

12. The Lease included two provisions that discuss termination. The first provision – labeled “Termination for Convenience” and located in Section 5 – stated that the “State may terminate this lease at any time after **January 1, 2010** by giving written notice to the Lessor at least **180** days prior to the date when such termination becomes effective.” (emphasis in original).

13. The second provision that discusses termination – labeled “Termination for Cause” – was in Section 5A. It stated that the State may terminate the Lease for eight enumerated “causes.” One of the causes, found in Section 5A(g), was “[t]he availability of space in State-owned property . . .”

14. The State's form lease included a blank provision under which the State could

include additional concessions from the counter-party before entering the lease. The State wrote in requirements in the blank provision in the Lease – Section 24 – to require LC Tower to alter portions of the L & C Tower before the State took possession of the property. Among other things, the alterations helped shape and build out the floors of the L & C Tower for TDEC’s desired use of the L & C Tower over the life of the Lease, as contemplated in 2004.

15. Upon information and belief, in July 2004, the State possessed available State-owned commercial office space in which the State could have housed TDEC. Instead, the State chose to lease commercial office space for TDEC in the L & C Tower and chose to require LC Tower to alter portions of the L & C Tower to fit the needs of TDEC as of July 2004.

**II. 401 Church and its lender executed the SNDA with the State as part of 401 Church’s purchase of the L & C Tower.**

16. In 2005, after the State executed the Lease, 401 Church purchased the L & C Tower from LC Tower. As part of the purchase, 401 Church assumed LC Tower’s rights and obligations under the Lease. The assumption of the Lease was a key asset that 401 Church received as part of the purchase.

17. 401 Church borrowed money from CIBC, Inc. (“CIBC”) to purchase the L & C Tower.

18. In conjunction with 401 Church’s purchase of the L & C Tower, the State, as a tenant of the L & C Tower, entered into a subordination, non-disturbance and attornment agreement (the “SNDA”) with both 401 Church and 401 Church’s lender, CIBC. A copy of the SNDA is attached as **Exhibit B**. The SNDA was a material and important part of the transaction as it provided protections to 401 Church that were material to 401 Church’s decision to purchase the L & C Tower.

19. The SNDA provided assurances to the State as the major tenant of the L & C

Tower. Among other things, CIBC and 401 Church agreed that they would not disturb the State's occupation of the L & C Tower during the term of the Lease.

20. In exchange for the assurances and rights provided by CIBC and 401 Church to the State under the SNDA, the State in turn agreed:

that, *without prior written consent of [CIBC] in each case, [the State] shall not (a) amend, modify, terminate or cancel the Lease* or any extensions or renewals therefore, or tender a surrender of the Lease (except in each case that, upon a default by [401 Church] under the Lease, [the State] may exercise its rights under the Lease after giving to [CIBC] the notice and cure period required by this Agreement).

(emphasis added). 401 Church relied on the State's agreement in the SNDA.

21. The Commissioner of the Department of Finance & Administration signed the SNDA on behalf of the State of Tennessee and was authorized to execute the SNDA on behalf of the State of Tennessee.

22. The Attorney General of the State of Tennessee approved the SNDA as to form and legality.

23. Upon information and belief, the State's agreement in the SNDA that the State would not terminate the Lease without CIBC's consent was material to CIBC agreeing to loan money to 401 Church for the purchase of the L & C Tower, and CIBC relied on the State's agreement.

24. The State's agreement in the SNDA that the State could not terminate the Lease without CIBC's consent was also material to 401 Church's decision to purchase the L & C Tower, and 401 Church relied on the State's agreement.

### **III. 401 Church and the State amended the Lease.**

25. In September 2005, the State and 401 Church agreed to amend the Lease.

26. Under the amendment, the State agreed that 401 Church would reduce the amount

of rent to be charged to the State under the rental schedule in Lease. In exchange for the reduced rent, the State deleted from the Lease the “Termination for Convenience” clause in Section 5.

27. CIBC, or its successor, accepted the alteration of the Lease.

28. With the amendment, the State was able to pay less money to 401 Church in exchange for the State eliminating a provision in the Lease that the State could terminate it for any reason that the State chose. The elimination of the “Termination for Convenience” provision further protected 401 Church from an arbitrary termination of the Lease simply because the State’s needs changed or because the State wanted to terminate the Lease.

#### **IV. The State launched “Project T3” and attempted to terminate commercial leases.**

29. In 2012, the Tennessee Department of General Services instituted a program called Transforming Tennessee for Tomorrow, or “Project T3.”

30. Under Project T3, the Department of General Services claimed that it will change the State’s office space configuration to make it more collaborative and to promote both communication and cooperation among employees. The Department of General Services also claimed that it will seek to “densify” much of the State’s office space – in other words, change the configuration of the State’s office space to fit more people per square foot into the space.

31. Under Project T3, the State changed the process by which it will lease commercial office space going forward. The State will continue to use a process that issues a request for proposals (“RFP”), but the RFP process itself has changed. Under the old process, the State always accepted the proposal that included the lowest bid that met the specifications of the RFP. Under the new process, the State will request different alternative proposals and information concerning “qualitative” aspects of a lease. The State may choose not to accept the lowest conforming bid. The State apparently will seek to make sure that any space leased in the future

will fit the State's subjective new needs under Project T3.

32. Upon information and belief, the State will require substantial changes to a building for every new lease for commercial office space in Tennessee so as to meet the State's new needs under Project T3. Specifically, the State will seek to change a building to ensure that it can fit more people into the leased space. The State seeks to shift the substantial cost of these changes to landlords.

33. Under Project T3, the State also claimed that it will seek to terminate leases for certain unidentified agencies and move those agencies into State-owned office space. Upon information and belief, before Project T3, the State had never attempted to terminate a lease early purportedly to move a State agency into a State-owned office space.

34. Under Project T3, the State claimed that it will analyze all of its State-owned buildings to determine if the State should decommission some of them. In late February or early March of 2013, the Department of General Services issued a request for qualifications seeking design services work for the decommission of the Cordell Hull Building and the Central Services Building. If the buildings are decommissioned, then the State must relocate the employees to other buildings.

35. When the parties executed both the Lease and the SNDA, Project T3 was not contemplated by the parties as a permitted reason to terminate the Lease.

**V. The State purported to terminate the Lease.**

36. In late February 2013, the State sent a letter to a representative for 401 Church purporting to terminate the Lease as of August 31, 2013 (the "February 2013 Letter"). A copy of the February 2013 Letter is attached as **Exhibit C**.

37. In the February 2013 Letter, the State wrote that "due to the changing needs of the

State with respect to leased space, the State has deemed it necessary to terminate the Lease pursuant to Section 5A (g) thereof.”

38. Under Project T3, the State’s “needs with respect to the leased space” changed as the State now seeks to alter the environment of office space that the State occupies.

39. Section 5A(g) of the Lease states that the “availability of State-owned property” may be a cause for termination in certain instances. Despite citing this provision of the Lease, the State made clear that it purportedly terminated the Lease because of the “changing needs of the State with respect to leased space,” not because of the availability of State-owned property.

40. With the removal of the “Termination for Convenience” provision, the State is in breach with its stated desire to terminate the Lease – a stated desire not based on the “availability of State-owned property.”

41. The State has further admitted in the February 2013 Letter that “[t]his relocation [of TDEC] is part of the State’s wide-reaching Transforming Tennessee for Tomorrow (T3) initiative. The goals of T3 are office modernization and maximization of taxpayer dollars through the use of State-owned space whenever possible.” Upon information and belief, this statement is a standard one that the State included in multiple purported termination letters that the State sent to landlords.

42. The State does not claim in the February 2013 Letter that 401 Church breached the Lease, and the State has never notified 401 Church of a purported breach of the Lease.

43. The State has never informed 401 Church’s lender of any purported breach of the Lease.

44. The State has never informed 401 Church’s lender of the purported termination.

45. The State did not seek the required consent – written or otherwise – of 401



Church's lender under the SNDA to terminate the Lease.

46. 401 Church's lender has never provided the State with written consent to terminate the Lease.

**VI. The State used Project T3 in an attempt to escape leases it does not like by improperly relying on a section of its form lease.**

47. Even if the State had claimed in the February 2013 Letter that it was cancelling the Lease because of "availability of State-owned space," the State's actions since sending the February 2013 Letter show that this would be a spurious claim.

48. As discussed above in paragraph 13, the Lease includes provision 5A(g) that states that the State may terminate the Lease for eight enumerated "causes." One of the causes is "[t]he availability of space in State-owned property . . ."

49. Upon information and belief, before sending the February 2013 Letter, the State knew that it would decommission the Cordell Hull Building and the Central Services Building. The Cordell Hull Building and the Central Services Building contain more than 400,000 square feet of space in downtown Nashville.

50. Upon information and belief, before sending the February 2013 Letter, the State knew that it must find office space for the employees located in the Cordell Hull Building and the Central Services Building because those two buildings could no longer house employees once decommissioned.

51. In early May 2013, the State issued an RFP informing participants in the Nashville real estate market that it will lease more than 73,000 square feet of commercial real estate in the Nashville area. The RFP required any bidder to deliver commercial office space in a private building on February 1, 2014. Further, the RFP made clear that the building must meet the State's goals under Project T3 of "densifying" the workforce and that a landlord must pay to

make the improvements to fit the State's new needs under Project T3. In other words, even if the State moved into a private building that it had just vacated, the State would nonetheless require a landlord to pay to have the building renovated to meet the State's needs under Project T3.

52. Under the RFP, the State required that the office space be available on February 1, 2014. Upon information and belief, this date was required because the State planned to decommission a State-owned building on January 31, 2014, and the State must have somewhere to put its employees. Even though the State has purported to terminate leases because of the purported availability of space in State-owned buildings, the State intends to move employees from a decommissioned State-owned building into a private building, instead of moving the employees into the purportedly available State-owned space.

53. Under the RFP, the State also required any landlord to pay a commission to Jones Lang Lasalle, a broker that the State hired. Astonishingly, under the deal that the State reached with Jones Lang Lasalle, the State will also receive from the broker a portion of most commissions that the broker will receive. Upon information and belief, the State plans to use its deal with Jones Lang Lasalle to receive a rebate / kickback from the broker in almost every new leases that the State will enter in the future.

54. Since issuing the RFP, the State has changed the dates and requirements under the RFP.

55. Upon information and belief, with the pending decommissioning of the Cordell Hull Building, the Attorney General for the State of Tennessee is currently looking for approximately 60,000 square feet of commercial office space in a private building in the downtown Nashville area. This 60,000 square feet is in addition to the office space the State seeks under the RFP.

56. Under Project T3, the State is attempting to terminate multiple leases with years remaining on many of them, purportedly because of the “availability of State-owned space.” Yet, the State continues to issue RFPs for additional new office space in the Nashville area instead of using the purportedly available State-owned space.

57. For example, in Parkway Towers in downtown Nashville, the Department of Intellectual and Developmental Disabilities (“Department of Disabilities”) had a lease for approximately 4,600 square feet of office space. That lease was set to expire on June 30, 2016. The Tennessee Bureau of Ethics and Campaign Finance (“Bureau of Ethics”) also had a lease in Parkway Towers for a similar size, and that lease was set to expire on June 30, 2013.

58. In early to mid-January of 2013, the State sent a letter to Parkway Towers, LLC purporting to terminate the lease for the Department of Disabilities, purportedly because of the availability of State-owned space. Upon information and belief, the State moved the Department of Disabilities into a renovated space in a State-owned building that fits the State’s new needs under Project T3.

59. On March 29, 2013, the Department of General Services issued an RFP for commercial office space in the Nashville area to house the Bureau of Ethics when the Bureau of Ethics lease ends at the end of June 2013. Under the RFP, the Bureau of Ethics will receive altered space that fits the State’s new needs under Project T3, and the State may receive a kickback from Jones Lang Lasalle’s commission under the new lease. The State could have moved the Bureau of Ethics into the State-owned space in a State-owned building instead of terminating the Department of Disabilities lease that had years left on it and moving the Department of Disabilities into a State-owned building.

60. The State’s actions show that, if it had claimed that it was terminating the Lease

because of the availability of State-owned space, instead of because of its changing needs with respect to leased space, then that claim would be unsupportable. Instead of moving employees from decommissioned State-owned buildings into other available State-owned space, the State is seeking to move those employees into private buildings. Instead of moving employees into State-owned space after a lease expires, the State purports to terminate existing leases and move those employees into State-owned buildings while seeking new leases in private buildings.

61. The State is using Project T3 to play a shell game with its commercial leases. The State is terminating leases purportedly to move State employees from private office space to State-owned office space when the State can fill its State-owned office space with (1) employees in other State buildings that will be decommissioned or (2) with employees that occupy space in private buildings under a lease when the lease is about to expire. If the State filled the State-owned office space with employees fitting into these two categories, then the State could fulfill its lease obligations under the leases that it is purportedly terminating under Project T3. Of course, the State would continue using its leased office space under the current configuration of that office space as agreed in the State's existing leases – barring some other deal with its landlords, and the State might not receive its kickbacks from Jones Lang Lasalle under new leases.

## **VII. The State has not performed under the Lease in good faith.**

62. Since receiving the February 2013 Letter, representatives of 401 Church have continually attempted to engage the State in discussions concerning the purported termination of the Lease.

63. Upon information and belief, under Project T3, the State has purported to terminate leases in the Nashville area and has provided inconsistent and changing termination

dates for some of the terminations. Upon information and belief, the State has also held over on leases. Participants in the real estate market in the Nashville are aware of the State's inconsistency with purported termination dates and potential for the State holding over.

64. The State's refusal to engage in any discussions concerning the State's purported termination is preventing 401 Church from either (1) leasing the space in the L & C Tower that the State currently leases or (2) otherwise establishing a use for the space after the State vacates it.

65. Meaningful discussion concerning the State's plan for the L & C Tower is material and necessary for 401 Church to remarket the space that the State uses.

66. Meaningful discussion concerning the State's plan for the L & C Tower is material and necessary for 401 Church to mitigate its damages from the State's breach of the Lease and the SNDA.

#### **COUNT I – BREACH OF CONTRACT – BREACH OF THE SNDA**

67. 401 Church realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

68. 401 Church, CIBC, and the State provided consideration for the SNDA.

69. 401 Church, CIBC, and the State all executed the SNDA.

70. The SNDA is a valid, enforceable contract.

71. 401 Church performed all conditions, covenants, promises, and agreements required under the SNDA.

72. CIBC or its successor performed all conditions, covenants, promises, and agreements required under the SNDA.

73. Paragraph 6 of the SNDA requires the State to obtain written consent from CIBC

or its successor before the State may terminate the Lease, provided that the termination was not the result of an uncured breach of the Lease for which the State provided CIBC or its successor an opportunity to cure.

74. The State never provided any notice of a breach of the Lease or breach of the SNDA to CIBC or its successor or to 401 Church.

75. 401 Church relied on the State's promise in Paragraph 6 of the SNDA when agreeing to purchase the L & C Tower from LC Tower, a purchase that included 401 Church's assumption of rights and responsibilities under the Lease.

76. CIBC or its successor has never given written consent to the State to terminate the Lease.

77. The State's purported termination of the Lease without CIBC's or its successor's written consent is a breach of the SNDA.

78. The State has refused to engage in meaningful discussions with 401 Church concerning the State's plans.

79. The State's refusal to engage in meaningful communication concerning the State's purported termination prevents 401 Church from leasing the space in the L & C Tower that the State currently leases or otherwise establishing a use for the space after the State vacates because many market participants are concerned that 401 Church cannot deliver space on a date certain.

80. The State's breach of the SNDA damaged 401 Church.

81. 401 Church is damaged in the amount of \$4,150,309.32, which represents the rent that the State has informed 401 Church the State will not pay.

82. 401 Church is additionally damaged in an amount to be determined stemming

from the State's refusal to engage in meaningful discussions concerning the State's purported termination. 401 Church believes that the additional damages will be between \$250,000.00 and \$2,000,000.00.

83. 401 Church is damaged in a total amount between \$4,400,309.32 and \$6,150,309.32 stemming from the State's breach of the SNDA.

## **COUNT II – BREACH OF CONTRACT – BREACH OF THE LEASE**

84. 401 Church realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

85. The Lease, executed by the State and LC Tower, is a binding contract under which both parties provided consideration.

86. 401 Church assumed the rights and obligations of LC Tower under the Lease.

87. The State and 401 Church validly amended the Lease in September 2005, and each provided consideration for the amendment.

88. The State drafted the Lease, as amended.

89. Both 401 Church and its predecessor performed all conditions, covenants, promises, and agreements required of the lessor under the terms of the Lease, as amended.

90. The State's purported termination is a breach of the Lease because the Lease does not allow termination of the Lease because of "changing needs of the State with respect to leased space."

91. Further, the State's purported termination is a breach of the Lease because the purported termination is actually a "Termination for Convenience." And, the State agreed to delete the "Termination for Convenience" provision from the Lease in exchange for lower rent payments.

92. The State's breach of the Lease damaged 401 Church.

93. 401 Church is damaged in the amount of \$4,150,309.32, which represents the rent that the State informed 401 Church the State will not pay.

94. 401 Church is also damaged in an amount to be determined stemming from the State's refusal to engage in meaningful discussions concerning the State's purported termination. 401 Church believes that the additional damages will be between \$250,000.00 and \$2,000,000.00.

95. 401 Church is damaged in a total amount between \$4,400,309.32 and \$6,150,309.32 stemming from the State's breach of the Lease.

### **COUNT III – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

96. 401 Church realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

97. 401 Church has two written contracts with the State – the Lease and the SNDA.

98. Tennessee law imposes a duty of good faith and fair dealing on every party to a contract.

99. The Lease and the SNDA are valid contracts that both the State and 401 Church entered.

100. The State has purported to terminate the Lease before the end of the Lease term. The State has refused to engage in meaningful discussion about the exact date that the State will vacate the L & C Tower. Instead, the State, through its actions in the Nashville market and through veiled communications to representatives of 401 Church, maintains the position that it may – at the State's discretion – push back the date it plans to leave. Upon information and belief, the State has changed the date it intends to leave other facilities where the State has



purportedly terminated leases or when a lease ends.

101. The State's refusal to engage in meaningful communication concerning the State's purported termination and the date that the State will purportedly leave is a violation of the State's duty of good faith and fair dealing inherent in both the Lease and the SNDA.

102. The State's refusal to engage in meaningful communication concerning the State's purported termination prevents 401 Church from either (1) timely leasing the space in the L & C Tower that the State currently leases or (2) otherwise establishing a use for the space after the State vacates because many market participants are concerned that 401 Church cannot deliver space on a date certain, given the State's position.

103. The State's purported termination in light of its other actions in Project T3 – specifically the shell game described above that the State is playing with its commercial office space – is a violation of the State's duty of good faith and fair dealing.

104. 401 Church is damaged in the amount of \$4,150,309.32, which represents the rent that the State has informed 401 Church the State will not pay.

105. 401 Church is also damaged in an amount to be determined stemming from the State's refusal to engage in meaningful discussions concerning the State's purported termination. 401 Church believes that the additional damages will be between \$250,000.00 and \$2,000,000.00.

106. 401 Church is damaged in a total amount between \$4,400,309.32 and \$6,150,309.32.

#### **COUNT IV – DETRIMENTAL RELIANCE**

107. 401 Church realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

108. In the SNDA, the State promised that it would not terminate the Lease without the written consent of 401 Church's lender. In all respects material to this dispute, the interest of 401 Church's lender and 401 Church are aligned when determining whether to allow the State to terminate the Lease before the end of its term.

109. The promise that the State provided in the SNDA to 401 Church was material to 401 Church's determination to purchase the L & C Tower.

110. The promise that the State provided in the SNDA to 401 Church was material to 401 Church's decisions when negotiating and executing other Leases in the L & C Tower. Given the State's promise in the SNDA, 401 Church knew that the State could not leave L & C Tower before December 31, 2014, without the consent of 401 Church's lender, and 401 Church negotiated and entered multiple other leases so that it would have flexibility and choices for L & C Tower on January 1, 2015.

111. Based on the State's promise in the SNDA, 401 Church entered other commercial leases for space in the L & C Tower that either ended before December 31, 2014, or contained provisions that allowed 401 Church to terminate the leases on or before December 31, 2014. This provided flexibility at the L & C Tower when the Lease ends, but to execute other leases at the L & C Tower in a manner that provided this flexibility, 401 Church often reduced rent or provided some other incentives to a tenant.

112. 401 Church's leasing structure relied on the State's promise in the SNDA that it would not terminate the Lease without the written consent of 401 Church's lender.

113. The State's promise is embodied in a written contract.

114. It was and is reasonable for 401 Church to rely on the State's promise in the SNDA.

115. It was foreseeable that 401 Church would rely on the State's promise in the SNDA.

116. 401 Church relied on the State's promise to 401 Church's detriment.

117. If the State is allowed to terminate the Lease without the written consent of CIBC – a termination that is contrary to the promise the State made in a written contract – then 401 Church will suffer serious harm.

118. The only way to prevent injustice from the State's actions is to prevent the State from terminating the Lease or to compensate 401 Church for both its lost rent and the concessions it provided to other tenants. To compensate 401 Church for the concessions it provided to other tenants and other costs based on its detrimental reliance on the State's promise would require a payment from the State to pay for such concessions and costs. 401 Church estimates the concessions and costs to be between \$800,000.00 and \$1,000,000.00

WHEREFORE, 401 Church prays for the following relief:

1. 401 Church be awarded no less than \$4,400,309.32 and no more than \$6,150,309.32, plus interest, under Counts I through III;
2. 401 Church be awarded no less than \$800,000.00 and no more than \$1,000,000.00, plus interest, under Count IV;
3. 401 Church be awarded its costs and expenses for the claim, including reasonable attorneys' fees and costs; and
4. 401 Church be awarded such other relief to which it may be entitled.



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ATTORNEYS FOR CLAIMANT,  
401 CHURCH STREET, LLC

AGENCY: <b>Environment &amp; Conservation</b>	<b>327.00</b>
ALLOTMENT CODE: <b>501.03</b>	COST CENTER: <b>10022</b>

This Instrument Prepared By:  
State of Tennessee  
Real Property Administration  
William R. Snodgrass Tennessee Tower  
22nd Floor, 312 Eighth Avenue North  
Nashville, Tennessee 37243-0299

**AMENDMENT NO. ONE  
TO THE LEASE BETWEEN  
THE STATE OF TENNESSEE  
AND  
401 CHURCH STREET, LLC  
DATED July 20, 2004  
LE 5093**

Lease, LE #5093, Recorded in Book 10175, Page 936, in the Register's Office, Davidson County shall be amended for the **First** time effective **September 1, 2005**.

- (1) Paragraph 5, of the lease that pertains to cancellation for convenience is deleted.
- (2) Paragraph 4 of the lease that pertains to rental is amended as follows:

Effective September 1, 2005 through December 31, 2005, the rent shall decrease from \$858,912.32 payable in installments of \$ 214,728.08 per month to \$ 844,103.50 payable in installments of \$ 211,025.88.

January 1, 2006 through December 31, 2006, the annual rent shall decrease from \$ 2,654,039.00 payable in installments of \$ 221,169.91 per month to \$ 2,609,612.50 payable in installments of \$ 217,467.71.

January 1, 2007 through December 31, 2007, the annual rent shall decrease from \$ 2,733,660.00 payable in installments of \$ 227,805.00 per month to \$ 2,689,233.50 payable in installments of \$ 224,102.79.

January 1, 2008 through December 31, 2008, the annual rent shall decrease from \$ 2,815,670.00 payable in installments of \$ 234,639.16 per month to \$ 2,771,243.50 payable in installments of \$ 230,936.96.

January 1, 2009 through December 31, 2009, the annual rent shall decrease from \$ 2,900,140.00 payable in installments of \$ 241,678.33 per month to \$ 2,855,713.50 payable in installments of \$ 237,976.13.

January 1, 2010 through December 31, 2010, the annual rent shall decrease from \$ 2,943,642.00 payable in installments of \$ 245,303.50 per month to \$ 2,899,215.50 payable in installments of \$ 241,601.29.

January 1, 2011 through December 31, 2011, the annual rent shall decrease from \$ 2,987,797.00 payable in installments of \$ 248,983.08 per month to \$ 2,943,370.50 payable in installments of \$ 245,280.88.

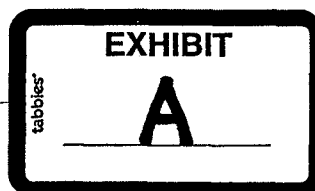
January 1, 2012 through December 31, 2012, the annual rent shall decrease from \$ 3,032,614.00 payable in installments of \$ 252,717.83 per month to \$ 2,988,187.50 payable in installments of \$ 249,015.63.

January 1, 2013 through December 31, 2013, the annual rent shall decrease from \$ 3,078,103.00 payable in installments of \$ 256,508.58 per month to \$ 3,033,676.50 payable in installments of \$ 252,806.38.

January 1, 2014 through December 31, 2014, the annual rent shall decrease from \$ 3,124,275.00 payable in installments of \$ 260,356.25 per month to \$ 3,079,848.50 payable in installments of \$ 256,654.04.

- (3) Except as hereinafter modified and amended, all other terms and conditions of the Lease Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Lease Agreement.



**LESSOR**  
401 Church Street, LLC

**STATE OF TENNESSEE**

BY: Armand Lasky 9/15/05  
Armand Lasky Date  
Manager

BY: Jim H. Jyhe 9/19/05  
Head of Agency Date

APPROVED:

BY: M. J. Lasky 9.22.05  
Commissioner Date  
Finance & Administration

BY: [Signature] 9/28/05  
Attorney General Date  
(Approved as to form and legality)

The Lessor fully understands that this lease is not binding except and until all appropriate State official's signatures have been fully obtained, approval of this agreement has been given by the State Building Commission, if applicable, and the fully executed document returned to the Lessor.

AUTHENTICATION FORM FOR LEASE  
AMENDMENT NUMBER ONE  
MADE BY AND BETWEEN  
401 CHURCH STREET, LLC  
AND THE  
STATE OF TENNESSEE

STATE OF TENNESSEE  
COUNTY OF Davidson

Before me, the undersigned, Notary Public of the State and County aforementioned, personally appeared **Armand Lasky**, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be a **Manager** of **401 Church Street, LLC**, the within named bargainor, a limited liability company, and that he as such manager, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Manager.

Witness my hand and seal at office, this 15th day of September, 2005.

Judy Berry Bright  
Notary Public

My Commission Expires:

November 24, 2005

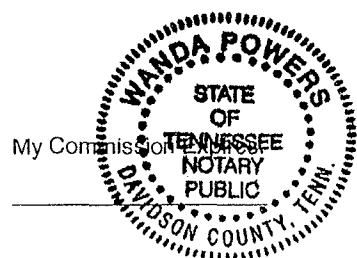


STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned Notary Public for Davidson County, **Jim Fyke, Commissioner of the Department of Environment & Conservation** with whom I am personally acquainted and who, upon oath, acknowledged that she is the Commissioner of the Department of Environment & Conservation and that /she as Commissioner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State of Tennessee by /herself as Commissioner.

Witness my hand and seal at office, this 19th day of September, 2005.

Wanda Powers  
Notary Public



My Commission Expires NOV. 22, 2008

AGENCY: Department of Environment & Conservation 327.00

ALLOTMENT CODE: 501.03 COST CENTER: 10022

This Instrument Prepared By:

State of Tennessee  
Real Property Management  
William R. Snodgrass Tennessee Tower  
22nd Floor, 312 Eighth Avenue North  
Nashville, Tennessee 37243-0299

NO. LE 5093

This Lease, entered into as of this 20<sup>th</sup> day of July, 2004, by and between LC Tower, LLC, hereinafter called the Lessor, and the State of Tennessee, hereinafter called the State:

WITNESSETH:

1. LOCATION. The Lessor hereby leases unto the State those certain premises with the appurtenances situated in the County of Davidson, City of Nashville, located at 401 Church Street.

2. DESCRIPTION. The premises above are more particularly described as follows:

Consisting of 177,706 square feet of net rentable office and related space in the building known as the L & C Tower and Annex located at 401 Church Street, Nashville, Tennessee 37219. The space to be occupied by the State is identified as being the space outlined on the floor plans and summary of rentable area attached as Exhibit A.

Being part of the same property further described in last recorded instrument conveyed to the Lessor in Deed Book 10175, Page 936, recorded in the Register's Office, County, Tennessee.

3. TERM. The term of this lease shall commence on January 1, 2005, and shall end on December 31, 2014, with such rights of termination as are hereinafter expressly set forth. If the date of occupancy is other than the commencement date, then the rental period shall begin with the date of occupancy, provided that the rental period shall begin no later than the latter of (a) the commencement date or (b) 30 days after the space is made available to the State in accordance with the conditions of this lease. This provision shall not relieve the Lessor of the liability to the State for damages in the event that the space is not made available to the State in accordance with the conditions of this lease on the commencement date specified above.

4. RENTAL. The State shall pay rental in arrears on the last day of the payment period as follows:

Effective January 1, 2005 through December 31, 2005, the annual rent shall be \$2,576,737.00 payable in installments of \$214,728.08 per month.

Effective January 1, 2006 through December 31, 2006, the annual rent shall be \$2,654,039.00 payable in installments of \$221,169.91 per month.

Effective January 1, 2007 through December 31, 2007, the annual rent shall be \$2,733,660.00 payable in installments of \$227,805.00 per month.

Effective January 1, 2008 through December 31, 2008, the annual rent shall be \$2,815,670.00 payable in installments of \$234,639.16 per month.

Effective January 1, 2009 through December 31, 2009, the annual rent shall be \$2,900,140.00 payable in installments of \$241,678.33 per month.

Effective January 1, 2010 through December 31, 2010, the annual rent shall be \$2,943,642.00 payable in installments of \$245,303.50 per month.

Effective January 1, 2011 through December 31, 2011, the annual rent shall be \$2,987,797.00 payable in installments of \$248,983.08 per month.

Effective January 1, 2012 through December 31, 2012, the annual rent shall be \$3,032,614.00 payable in installments of \$252,717.83 per month.

Effective January 1, 2013 through December 31, 2013, the annual rent shall be \$3,078,103.00 payable in installments of \$256,508.58 per month.

Effective January 1, 2014 through December 31, 2014, the annual rent shall be \$3,124,275.00 payable in installments of \$260,356.25 per month.

Rent payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified, based on the actual number of days in the month. Rental shall be paid to Lessor at the address specified in Paragraph 6, or to such other address as the Lessor may designate by a notice in writing.

4.A. AUTOMATIC DEPOSITS. "The Lessor shall complete and sign an "Authorization Agreement for Automatic Deposits (ACH Credits) Form." This form shall be provided to the Lessor by the State. Once this form has been completed and submitted to the State by the Lessor, all payments to the Lessor, under this or any other contract the Lessor has with the State of Tennessee, shall be made through the State of Tennessee's Automated Clearing House wire transfer system. The Lessor shall not invoice the State for services until the Lessor has completed this form and submitted it to the State. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. All corrections shall be made within two banking days of the effective date of the original transaction. All other errors detected at a later date shall take the form of a refund or, in some instances, a credit memo if additional payments are to be made.



Department of Environment & Conservation  
 LC Tower, LLC  
 401 Church Street  
 Nashville, Davidson County  
 Page 2

5. **TERMINATION FOR CONVENIENCE.** The State may terminate this lease at any time after January 1, 2010 by giving written notice to the Lessor at least 180 days prior to the date when such termination becomes effective. Said notice shall commence on the day after the date of mailing.

5A. **TERMINATION FOR CAUSE.** The State may in its sole discretion terminate this lease at any time for any of the following causes: (a) Failure of the Lessor to provide any of the services required under the terms of this lease; (b) Failure by the Lessor to make such modifications, alterations or improvements as may be necessary to insure that the leased premises are brought up to, and maintained at, codes for building construction, health, fire and life safety, and handicapped accessibility applicable to the leased premises, except where deficiencies are caused by the State; (c) Failure to disclose any conflict or potential conflict of interest existing at the date of this lease or hereafter created; (d) Termination or consolidation of the State operations or programs housed in the leased premises because of loss of funding; (e) Lack of funding by the appropriate Legislative Body for obligations required of the State under this lease; (f) Misrepresentations contained in the response to the request for proposal or committed during the negotiation, execution or term of this lease; (g) The availability of space in State-owned property, provided that no cancellation for this reason may take place until the lease has been in effect for one year; and (h) Any other breach of the terms of this lease by Lessor which is not adequately remedied within twenty (20) days of the mailing of written notice thereof to Lessor.

6. **NOTICES.** All Notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows: To the Lessor at:

LC Tower, LLC  
 Attn: Richard Fletcher, 511 Group, Inc.  
 511 Union Street, Suite 2610  
 Nashville, Tennessee 37219  
 Phone: (615)-256-1555

To the State at: Department of Finance & Administration  
 Office of Real Property Management  
 William R. Snodgrass Tennessee Tower  
 22nd Floor 312 Eighth Avenue North  
 Nashville, Tennessee 37243-0299

7. **ASSIGNMENT AND SUBLETTING.** The State shall not assign this lease without the written consent of the Lessor, but shall in any event have the right to sublet the leased premises.

8. **INSPECTION.** The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to render services and make any necessary repairs to the premises.

9. **ALTERATIONS.** The State shall have the right during the existence of this lease to make alterations, attach fixtures and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the State and may be removed therefrom by the State prior to the termination or expiration of this lease or any renewal or extension thereof, or within a reasonable time thereafter.

10. **SURRENDER OF POSSESSION.** Upon termination or expiration of this lease, the State will peaceably surrender to the Lessor the leased premises in as good order and condition as when received, reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which the State has no control or for which Lessor is responsible pursuant to this lease, excepted. The State shall have no duty to remove any improvements or fixtures placed by it on the premises or to restore any portion of the premises altered by it, save and except in the event the State elects to remove any such improvement or fixture and such removal causes damages or injury to the leased premises and then only to the extent of any such damage or injury.

11. **QUIET POSSESSION.** The Lessor agrees that the State in keeping and performing covenants contained herein on the part of the State to be kept and performed, shall at all times during the existence of this lease peaceably and quietly have, hold and enjoy the leased premises, without suit, trouble or hindrance from the Lessor, or any person claiming under Lessor.

12. **REPAIR AND MAINTENANCE.** During the lease term, the Lessor shall maintain the leased premises and appurtenances which he provides in good repair and tenable condition, including, but not limited to, the maintenance and repair of the elevator, if any, plumbing, heating, electrical, air conditioning and ventilating equipment and fixtures to the end that all such facilities are kept in good operating condition except in case of damage arising solely from a willful or negligent act of the State's agent, invitee, or employee. Lessor's obligations shall also include, but are not limited to, periodic painting to the satisfaction of the State, furnishing and replacing electrical light bulbs, fluorescent tubes, ballasts and starters, and air conditioning and ventilating equipment filters. In case Lessor, after notice in writing from the State requiring the Lessor to comply with the requirements of this paragraph in regard to a specified condition, shall fail, refuse or neglect to comply therewith, or in the event of an emergency constituting a hazard to the health or safety of the State's employees, property, or invitees, the State may perform such maintenance or make such repair at its own cost and, in addition to any other remedy the State may have, may deduct the amount thereof from the rent that may then be or thereafter become due hereunder.

13. **APPROPRIATIONS.** All terms and conditions of this lease are made subject to the continued appropriations by the appropriate Legislative Body.

14. **DESTRUCTION.** If the leased premises are totally destroyed by fire or other casualty, this lease shall terminate. If such casualty shall render ten (10) percent or less of the floor space of the leased premises unusable for the purpose intended, Lessor shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten (10) percent of such floor space unusable but not constitute total destruction, Lessor shall forthwith give notice to State of the specific number of days required to repair the same. If Lessor under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, State, in either such event, at its option, may terminate this lease or, upon notice to Lessor, may elect to

Department of Environment & Conservation  
 LC Tower, LLC  
 401 Church Street  
 Nashville, Davidson County  
 Page 3

undertake the repairs itself, deducting the cost thereof from the rental due to become due under this lease and any other lease between Lessor and State.

In the event of any such destruction other than total, where the State has not terminated the lease as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Lessor shall diligently prosecute the repair of said leased premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten (10) percent or less of the floor space, or within the period specified in Lessor's notice in connection with partial destruction aggregating more than ten (10) percent, the State shall have the option to terminate this lease or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this lease and any other lease between Lessor and State.

In the event the State remains in possession of said premises though partially destroyed, the rental as herein provided shall be reduced by the same ratio as the net square feet the State is thus precluded from occupying bears to the total net square feet in the leased premises. "Net square feet" shall mean actual inside dimensions and shall not include public corridors, stairwells, elevators, and restrooms.

15. **SERVICES AND UTILITIES.** The Lessor shall furnish to the State, during lease term, at Lessor's sole cost, the following services, utilities and supplies: (Enter "X" in each applicable box)

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> (1) All utilities (except telephone) | <input checked="" type="checkbox"/> (4) Elevator Service             | <input checked="" type="checkbox"/> (6) Restroom Supplies          |
| <input checked="" type="checkbox"/> (2) Janitor Services & Supplies      | <input checked="" type="checkbox"/> (5) Hot and Cold Water Equipment | <input checked="" type="checkbox"/> (7) Heat Equipment             |
| <input checked="" type="checkbox"/> (3) Drinking Fountains               |  | <input checked="" type="checkbox"/> (8) Air Conditioning Equipment |

The janitorial service, if provided above, shall be provided in accordance with the following schedule: Daily - Dust all furniture, counters, cabinets and window sills; sweep all floors, empty all wastebaskets and ashtrays; dispose of all rubbish; clean and maintain in sanitary condition all restrooms and plumbing fixtures; sweep sidewalks, stairways and halls, yard care; remove snow from entrance ways and parking areas if present; clean the parking area; and replace light bulbs, tubes, ballasts and starters if necessary. Weekly-Mop all floors and dust all venetian blinds. Vacuum carpets, if any. Every Other Month-Strip and wax all floors. Semi-Annually-Wash all windows; venetian blinds, light fixtures, walls and painted surfaces.

In the event of the failure by the Lessor to furnish any such services, utilities or supplies in a satisfactory manner, the State may furnish the same at its own cost, and, in addition to any other remedy the State may have, may deduct the amount thereof from the rent or any other payments that may then be or thereafter become due hereunder.

16. **SERVICES CREDIT.** Lessor agrees that the rental provided under the terms of Paragraph 4, hereof is based in part upon the costs of the services, utilities, and supplies to be furnished by Lessor pursuant to Paragraph 15 hereof and that should the State vacate the premises prior to the end of the term of this lease, or, if after notice in writing from the State, all or any part of such services, utilities or supplies for any reason are not used by the State, then, in such event, the monthly rental rate as to each month or portion thereof as to which such services, utilities or supplies are not used by the State shall be reduced by an amount equal to the average monthly costs of such unused services, utilities or supplies during the six-month period immediately preceding the first month in which such services, utilities or supplies are not used.

17. **TIME OF ESSENCE.** Time is of the essence of this lease, and the terms and provisions of this lease shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns to the respective parties hereto.

18. **HOLDING OVER.** In the event the State remains in possession of the premises after the expiration of the lease term, or any extension thereof, this lease shall be automatically extended on a month to month basis, subject to thirty (30) days termination by either party, and otherwise on the terms and conditions herein specified, so far as applicable.

19. **FINANCIAL INTEREST.** The Lessor has provided to the State a list of names and addresses of persons, associations, or corporations who hold any financial interest in the above leased property; such list shall be immediately revised in the event of a transfer of any such interest.

20. **CODES.** The Lessor shall maintain the leased premises in accordance with all fire, building and life safety codes and The Americans with Disabilities Act.

21. **SPACE AUDIT.** The Lessor certifies that the amount of space, as described in Paragraph 2 above, is accurate to the best of his knowledge. The State reserves the right to perform physical measurements of said space and adjust the rental amount based upon the amount of space as measured. If the measured amount is less than the amount of space indicated in Paragraph 2 above, the adjustment in rent shall be a percentage reduction equal to the percentage difference between the space as reported by the Lessor and that actually measured by the State. In all cases, the State shall use the current Building Owner's and Manager's Association (BOMA) standards of measurements for either single or multi-tenant occupancy, whichever is applicable.

22. **PEST CONTROL.** The Lessor shall maintain the premises in a condition that is free of pests, rodents, and other vermin.

23. The Lessor fully understands that this lease is not binding except and until all appropriate State officials' signatures have been fully obtained, approval of this agreement has been given by the State Building Commission, if applicable, and the fully executed document returned to the Lessor.

Department of Environment & Conservation  
 LC Tower, LLC  
 401 Church Street  
 Nashville, Davidson County  
 Page 4

24. Prior to the execution of this lease, the special provisions which are described below and/or attached hereto and incorporated by reference were agreed upon.

Lessor shall complete build-out for the Floor 1 Annex Space including interior tenant improvements at no additional cost to the State and in accordance with (i) Addendum No. 1, Lessor's Design Narrative (attached hereto), and/or (ii) plans and specifications approved by the State, Office of Real Property Management; and in conformity with Lessor's Proposal No. 0309909-19DEC and the Standard Specifications for Office Space including the Summary of Lease Requirements contained therein which is by reference made a part hereof and located in the Office of Real Property Management, 22<sup>nd</sup> Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee 37243-0299. Lessor shall complete build-out and interior tenant improvements of the Floor 1 Annex Space no later than December 31, 2004, provided that at least 120 days prior to December 31, 2004, Lessor is in receipt of (i) a fully executed lease, and (ii) an approved floor plan from the Office of Interiors Management, and State Fire Marshall's Office. All handicap facilities shall conform to provisions of TCA 68-120-201. Both parties identified herein shall sign plans to verify compliance of all requirements by the State.

Prior to any expenditure for tenant development and architectural services, Lessor must work under the guidance of a Real Property Management Facilities Planner in accordance with Paragraph 4j of Lessor's Proposal.

Lessor shall complete build-out of the alterations to the State spaces at no additional cost to the State and shall be in accordance with Addendum 2, L&C Tower/Annex Requested Improvements (attached hereto). Lessor shall begin construction of the alterations upon receipt of an executed lease and approved plans and specifications from the Office of Interiors Management. Lessor and the State shall develop a construction schedule for the alterations that is acceptable to both parties.

See Addendum No. 3, for Rules and Regulations as provided by the Lessor, which is attached.

The Lessor shall provide twenty-nine (29) paved & striped parking spaces within one city block of the proposed office space.

The State shall have the right to reduce, on a contiguous manner only, the square footage and appropriate rental amount by up to 10% of the total rentable square of office space as set forth in Paragraph 2 above, provided Lessor has not incurred any material or construction costs in the square footage.

IN WITNESS WHEREOF, this lease has been executed by the parties hereto:

LESSOR

STATE OF TENNESSEE

LC TOWER, LLC  
 A Delaware Limited Liability Corporation  
 By PERIDOT, INC.

BY: Craig R. Caffarelli 7/8/04  
 Vice-President Date

BY: [Signature]  
 Head of Agency Date

APPROVED:

BY: [Signature] 7/13/04  
 Commissioner Date  
 Finance and Administration

BY: [Signature] 07/19/04  
 Attorney General Date  
 (Approved as to Form & Legality)  
 6/25/04

Department of Environment & Conservation  
LC Tower, LLC  
401 Church Street  
Nashville, Davidson County  
Page 5

**AUTHENTICATION FORM FOR LEASE  
MADE BY AND BETWEEN  
LC TOWER, LLC  
AND  
THE STATE OF TENNESSEE**

Illinois  
STATE OF ~~TENNESSEE~~  
COUNTY OF COOK

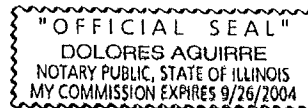
Before me, the undersigned, Notary Public of the State and County aforementioned, personally appeared Craig R. Caffarelli, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be Vice-President of PERIDOT, Inc., a corporation, which corporation is the Manager of Owner LC Tower, LLC, the within named limited liability corporation, and that he as such Vice-President, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the the corporation in its capacity as Manager.

Witness my hand and seal at office, this 8<sup>th</sup> day of July, 2004.

Dolores Aguirre  
Notary Public

My Commission Expires:

9/26/2004



STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned Notary Public for Davidson County, **Betsy Child, Commissioner of the Department of Environment & Conservation**, with whom I am personally acquainted and who, upon oath, acknowledged that she is the Commissioner of the Department of Environment & Conservation, and that she as Commissioner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State of Tennessee by herself as Commissioner.

Witness my hand and seal at office, this 12<sup>th</sup> day of July, 2004.

Dolores Aguirre  
Notary Public

My Commission Expires:

1-18-05

COPY

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Box 35

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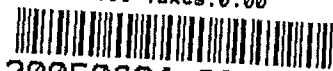
**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**STATE OF TENNESSEE,**  
**Tenant**

**AND**

**CIBC INC.,**  
**Lender**

Davidson County AGRMTTRUST  
Recvd: 06/24/05 13:35 11 p  
Fees:57.00 Taxes:0.00



20050624-0072968

**Map:** 93-6-1

**Parcel:** 89

**County:** Davidson  
**State:** Tennessee

**Premises:** 177,706 square feet of office space  
located on floors 4,5,6,7,8,9,10,11,12,  
13,14,15,16,17,18,19 and 20 of the  
Tower and floors 1,3,4,5,6,7,8, and 9 of  
the Annex, and in the basement

(subject to Tenant's space reduction  
rights contained in the Lease)

**Dated:** as of June 23, 2005

---

**Record and return by mail to:**

*Prepared by*  
**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, New York 10166  
**Attention: William C. Seligman, Esq.**



## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

THIS AGREEMENT made as of this 22 day of JUNE, 2005, by and among 401 CHURCH STREET, LLC, a Tennessee limited liability company ("Landlord"), CIBC INC., a Delaware corporation ("Lender"), and STATE OF TENNESSEE ("Tenant").

### **RECITALS:**

A. Tenant has executed that certain lease dated July 20, 2004 (the foregoing, the "Lease"), with LC Tower, LLC predecessor-in-title to Landlord, as lessor, covering the premises described in the Lease consisting of approximately 177,706 (subject to Tenant's space reduction rights) square feet of office space (the "Premises") in that certain building located at 401 Church Street, Nashville, Tennessee (the "Property") and more particularly described in Exhibit A attached hereto and made a part hereof by this reference; and

B. Lender has made (or agreed to make) a loan to Landlord secured by a mortgage or deed of trust encumbering the Property and an assignment of Landlord's interest in the Lease (said mortgage or deed of trust and assignment of leases, together with any amendments, renewals, increases, modifications, substitutions or consolidations of either of them, collectively, the "Security Instrument"); and

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument, and to have Landlord confirm its agreement therewith.

**NOW, THEREFORE**, in consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. The Lease and any extensions, modifications or renewals thereof, including but not limited to any option to purchase or right of first refusal to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Security Instrument and the lien created thereby.

2. Tenant agrees to deliver to Lender, in the manner set forth in Paragraph 13 of this Agreement, a copy of any notice of default sent to Landlord by Tenant. If Landlord fails to cure such default within the time provided in the lease, Lender shall have the right, but not the obligation, to cure such default on behalf of Landlord within thirty (30) calendar days after the time provided for Landlord to cure such default in the Lease has expired or, if such default cannot be cured within that time, within a reasonable period provided Lender is proceeding with due diligence to cure such default. In such event, Tenant shall not terminate the Lease while such remedies are being diligently pursued by Lender. Further, Tenant shall not terminate the Lease on the basis of any default by Landlord which is incurable by Lender (such as, for example, the bankruptcy of Landlord or breach of any representation by Landlord), provided Lender is proceeding with due diligence to commence an action to appoint a receiver or to obtain title to the Property by foreclosure, deed in lieu of foreclosure, or otherwise (collectively, "Foreclosure"). Tenant hereby agrees that no action taken by Lender to enforce any rights under the Security Instrument or related security documents, by reason of any default thereunder (including, without limitation, the appointment of a receiver, any Foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Tenant to terminate the Lease nor shall such action invalidate or constitute a breach of any of the terms of the Lease.

3. So long as Tenant is not in default under the Lease, Lender shall not disturb Tenant's possession and occupancy of the Premises during the term of the Lease.

4. If Lender or its nominee or designee, or another purchaser of the Property upon a Foreclosure (any such person or entity, a "Successor Owner") succeeds to the interest of Landlord under the Lease, subject to Tenant's performance of its obligations under the Lease, the Lease will continue in full force and effect. Thereupon, Successor Owner shall recognize the Lease and Tenant's rights thereunder and Tenant shall make full and complete attornment to Successor Owner as substitute landlord upon the same terms, covenants and conditions as provided in the Lease, including, but not limited to, any option to purchase or right of first refusal to purchase the Property as may be provided in the Lease. Notwithstanding the foregoing, Tenant agrees that any such option or right of first refusal to purchase the Property or any portion thereof, as may be provided in the Lease shall not apply to any Foreclosure, as defined herein, and shall not apply to any transfer of the Property by Successor Owner following such Foreclosure. In consideration of the foregoing, Lender agrees that any such option or right of first refusal shall not be terminated by any Foreclosure or conveyance of the Property by Successor Owner following such Foreclosure; rather, any such option or right of first refusal remain as an obligation of any party acquiring the Property following the conveyance of the Property by Successor Owner following such Foreclosure. Furthermore, Tenant expressly confirms to Lender that any acquisition of title to all or any portion of the Property pursuant to Tenant's exercise of any option or right of first refusal contained in the Lease shall result in Tenant taking title subject to the lien of the Security Instrument.

5. Tenant agrees that, if Successor Owner shall succeed to the interest of Landlord under the Lease, Successor Owner shall not be:

- (a) liable for any prior act or omission of Landlord or any prior landlord or consequential damages arising therefrom; or
- (b) subject to any offsets or defenses which Tenant might have as to Landlord or any prior landlord unless Lender has failed to cure any default by Landlord as herein provided; or
- (c) required or obligated to credit Tenant with any rent or additional rent for any rental period beyond the then current month which tenant might have paid Landlord; or
- (d) bound by any amendments or modifications of the Lease made without Lender's or Successor Owner's prior written consent; or
- (e) liable for refund of all or any part of any security deposit unless such security deposit shall have been actually received by Lender.

6. Tenant agrees that, without the prior written consent of Lender in each case, Tenant shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, or tender a surrender of the Lease (except in each case that, upon a default by Landlord under the Lease, Tenant may exercise its rights under the Lease after giving to Lender the notice and cure period required by this Agreement), (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

7. To the extent that the Lease shall entitle Tenant to notice of the existence of any Security Instrument and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

8. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to require that Tenant pay all rent under the Lease as directed by Lender, which payment shall, to the extent

made, satisfy the obligations of Tenant under the Lease. Landlord agrees to hold Tenant harmless with respect to any such payments made by Tenant to Lender.

9. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Landlord under the Lease unless and until Lender takes title to the Property. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Property or the portion thereof containing the Premises, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease, ~~and Successor Owner is hereby released or relieved of any other liability hereunder and under the Lease.~~ Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

10. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

11. EACH OF TENANT, LENDER AND LANDLORD HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT. SEE 11 CONTINUED BOTTOM OF PAGE 3.

12. The provisions of the Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. The words, "Lender", "Landlord" and "Tenant" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

13. All notices and all other communication with respect to this Agreement shall be directed as follows: if to Lender, 300 Madison Avenue, 8<sup>th</sup> Floor, Attention: Real Estate Group, New York, New York 10017, or such other address as Lender may designate in writing to Tenant; and, if to Tenant, at the address set forth in the Lease or at such other address as tenant may designate in writing to Lender. All notices shall be in writing and shall be (a) hand-delivered, (b) sent by United States express mail or by private overnight courier, or (c) served by certified mail postage prepaid, return receipt requested, to the appropriate address set forth above. Notices served as provided in (a) and (b) shall be deemed to be effective upon delivery or upon refusal thereof. Any notice served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three business days after the date of mailing, whichever is earlier in time.

14. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

15. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

[no further text this page]

3  
11. ANY RIGHTS OR CLAIMS AGAINST THE STATE OF TENNESSEE OR ITS EMPLOYEES  
NY:631292.4 HEREUNDER, AND ANY REMEDIES ARISING THEREFROM, SHALL BE SUBJECT TO AND  
LIMITED TO THOSE RIGHTS AND REMEDIES, IF ANY, AVAILABLE UNDER TENNESSEE  
CODE ANNOTATED, SECTIONS 9-8-101 THROUGH 9-8-407.

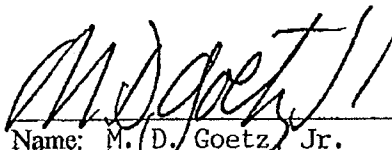


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**CIBC INC.**, a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

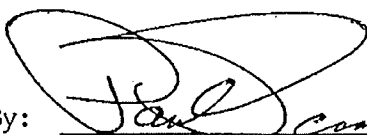
**STATE OF TENNESSEE**

By:   
Name: M. D. Goetz, Jr.  
Title: Commissioner, Finance & Administration

AGREED AND CONSENTED TO:

**401 CHURCH STREET LLC**, a Tennessee limited liability company

By: \_\_\_\_\_  
Name:  
Title:

By:   
Attorney General  
(Approved as to Form & Legality)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CIBC INC., a Delaware corporation

By: 

Name:

Title: Authorized Signatory

STATE OF TENNESSEE

By: 

Name: M. D. Goetz, Jr.

Title: Commissioner, Finance &  
Administration

AGREED AND CONSENTED TO:

401 CHURCH STREET LLC, a Tennessee limited liability company

By: \_\_\_\_\_

Name:

Title:

By: 

Attorney General


(Approved as to Form & Legality)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CIBC INC., a Delaware corporation

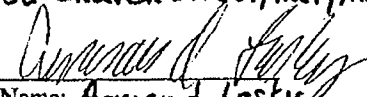
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

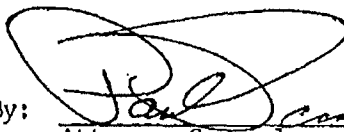
STATE OF TENNESSEE

By:   
Name: M. D. Goetz, Jr.  
Title: Commissioner, Finance & Administration

AGREED AND CONSENTED TO:

401 CHURCH STREET LLC, a Tennessee limited liability company  
By AEL Church Street, Inc., Managing Member, a Tennessee corporation

X By:   
Name: Armand Lasky  
Title: President

By:   
Attorney General  
(Approved as to Form & Legality)

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned Notary Public for Davidson County, **M. D. Goetz, Jr., Commissioner of the Department of Finance & Administration**, with whom I am personally acquainted and who, upon oath, acknowledged that he is the Commissioner of the Department of Finance & Administration, and that he as Commissioner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State of Tennessee by himself as Commissioner.

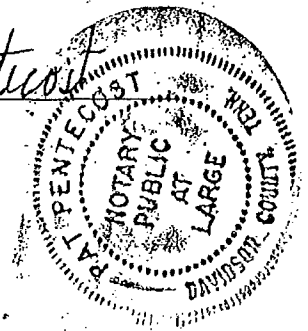
Witness my hand and seal at office, this 16 day of June, 2005.

Pat Pentecost

Notary Public

My Commission Expires:

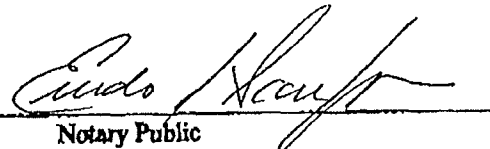
3-31-07



**LENDER ACKNOWLEDGMENT**

STATE OF NEW YORK  
COUNTY OF NEW YORK

On the 21<sup>st</sup> day of June in the year 2005, before me, the undersigned, personally appeared David Roth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of CIBC Inc., and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

My commission expires: \_\_\_\_\_

EMIDIO J. SCARFOGLIERO  
Notary Public, State of New York  
No. 01SC6080939  
Qualified in Nassau County  
Commission Expires Sept. 23, 2008

**TENANT ACKNOWLEDGMENT**

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2005, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of the State of Tennessee and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

LANDLORD ACKNOWLEDGMENT

STATE OF NEW YORK  
COUNTY OF Nassau

401 Church Street, Inc.,  
as the Managing Member  
of and on behalf of

On the 22 day of June in the year 2005, before me, the undersigned, personally appeared Armand Lasky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Authorized Signatory of 401 Church Street LLC, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

X Rita Berger  
Notary Public

My commission expires:

January 16, 2006

RITA BERGER  
Notary Public, State of New York  
No. 010E5054388  
Qualified in Nassau County  
Commission Expires Jan. 16, 2002-2006

**EXHIBIT A****Legal Description of Property**

Being a parcel of land in Nashville, First Civil District, Nineteenth Councilmanic District, Davidson County, Tennessee, located in the southwest quadrant of the intersection of Church Street and Fourth Avenue North, being a part of Lot No. 66, as shown on the plan of the original Town of Nashville, not of record, and being more particularly described as follows:

Beginning at the point of intersection of the southerly right-of-way line of Church Street and the westerly right-of-way line of Fourth Avenue North;

Thence, with said right-of-way line, S 29 deg. 51 min. E, 233.26 feet to a point;

Thence, leaving said right-of-way line with the northerly right-of-way line of Alley No. 54, S 59 deg. 32 min. W, 118.96 feet to the point of intersection with the easterly right-of-way line of Alley No. 66;

Thence, with said right-of-way line, N 29 deg. 51 min. E, 110.16 feet to a point;

Thence, leaving said right-of-way line with the northerly right-of-way line of said Alley No. 66, N 75 deg. 08 min. W, 7.46 feet to a point;

Thence, continuing with said right-of-way line, S 60 deg. 14 min. W, 6.64 feet to a point in the easterly line of property conveyed to Crescent Associates, LTD by Deed of Record in Book 6375, page 440, Register's Office for Davidson County, Tennessee;

Thence, with said line, N 30 deg. 01 min. W, 119.13 feet to a point in the southerly right-of-way line of Church Street;

Thence, with said right-of-way line, N 60 deg. 09 min. E, 131.24 feet to the point of beginning;

Containing 29,281 square feet or 0.67 acre, more or less.



STATE OF TENNESSEE  
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES  
COMMISSIONER

BILL HASLAM  
GOVERNOR

February 20, 2013

FEB 26 2013

Richard Fletcher  
401 Church Street, LLC  
401 Church Street, Suite 2510  
Nashville, TN 37219

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: Lease # 5093 for premises located at 401 Church Street (the "Premises") by and between 401 Church Street, LLC and the State of Tennessee (the "State") on behalf of Department of Environment and Conservation (the "Lease")

Dear Mr. Fletcher:

We regret to inform you that due to the changing needs of the State with respect to its leased space, the State has deemed it necessary to terminate the Lease pursuant to Section 5A (g) thereof. The State shall surrender possession of the Premises no later than August 31, 2013 (the "Surrender Date"). The State shall continue to pay the applicable rental rate set forth in the Lease through the Surrender Date.

This relocation is part of the State's wide-reaching Transforming Tennessee for Tomorrow (T3) initiative. The goals of T3 are office modernization and maximization of taxpayer dollars through the use of State-owned space wherever possible.

We have appreciated the opportunity to work with you over the term of the Lease. If you have any questions regarding this letter, please contact me at (615) 253-1175. Additionally, you will be contacted at least one (1) week prior to the Surrender Date to coordinate the return of the keys to the Premises. Thank you in advance for your cooperation.

Sincerely,

Ron Colter, Director  
Real Estate Asset Management

cc: Steve Berry  
Heather Iverson  
Kem Allen, TDEC

REAL ESTATE ASSET MANAGEMENT

312 ROSA L. PARKS AVENUE, SUITE 2200 • NASHVILLE, TENNESSEE 37243  
(615) 741-2315 • WWW.TN.GOV/GENERAISERV/

